Bukit Punchor Development Sdn Bhd v Yomart Environmental System (M) Sdn Bhd

HIGH COURT (PULAU PINANG) — COMPANIES WINDING-UP NO 28–53 OF 2000

KAMALANATHAN RATNAM J

9 JANUARY 2002

Civil Procedure *— Costs — Review of registrar's certificate — Calculation of time — When filing of application for review must be made — Whether 14 day period to run after order for taxation made — Rules of the High Court 1980 O 3 r 2(2), (3) & O 59 r 34(2)*

The senior assistant registrar ('SAR') had assessed the costs in a winding up petition and had fixed the sum on 30 January 2001. The petitioner then sought a review before the SAR in the form of encl 20 filed on 13 February 2001. The respondent raised a preliminary objection contending that the application for review was filed out of time. In their submissions, the petitioner had relied on O 3 r 2(2) of the Rules of the High Court 1980 ('the RHC'), whereas the respondent relied on O 3 r 2(3) of the RHC. The SAR upheld the preliminary objection and dismissed the petitioner's application for review. The petitioner appealed.

Held, allowing the appeal:

The clear distinction rests with the word 'after' as stated in O 3 r 2(2) of the RHC. Reading O 59 r 34(2) with O 3 r 2(2) of the RHC meant that where, as in this case, an application for a review was to be made, it could be done at any time within the 14 days, and which 14 days was to start running the day after the order was made, and since the order, namely the taxation of the bill of costs was done on 30 January 2001, the 14 days would start running from 31 January 2001 and therefore the 14th day would be 13 February 2001. The appellant was therefore within time to have filed encl 20. Clearly, the respondent had confused itself with the effect of O 3 r 2(3) of the RHC. The respondent had failed to read O 3 r 2(3) with the effect of O 59 r 34(2) of the RHC. If it had done so, it would have noted that O 59 r 34(2) could only be read with O 3 r 2(2) and not O 3 r 2(3) of the RHC. The period specified in O 3 r 2(3) of the RHC did not allow for the 14 days to commence after the date of the order being made. The words used were that the act, ie as in this case, the filing of the application for review, must be done within or not less than the 14 days provided. But the rule specifically relating to review stated that the 14 day period should commence at any time within 14 days after the decision was made. Clearly, O 59 r 34(2) was meant to attract to itself, O 3 r 2(2) to be read together and not O 3 r 2(3) of the RHC (see p 304A–D).

[Bahasa Malaysia summary

Penolong kanan pendaftar ('PKP') telah menaksirkan kos dalam satu petisyen penggulungan dan telah menetapkan satu jumlah pada 30 Januari 2001. Pempetisyen kemudian telah memohon satu kajian semula di hadapan PKP dalam kandungan 20 yang difailkan pada 13 Februari 2001. Responden telah menimbulkan satu bantahan awal menegaskan bahawa permohonan untuk kajian semula telah difailkan di luar had masa. Dalam penghujahan mereka, pempetisyen telah bergantung kepada A 3 k 2(2) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), sementara responden telah bergantung kepada A 3 k 2(3) KMT. PKP telah mengekalkan bantahan awal tersebut dan menolak permohonan pempetisyen untuk kajian semula. Pempetisyen telah membuat rayuan.

Diputuskan, membenarkan rayuan tersebut:

Perbezaan yang jelas terletak pada perkataan 'after' sebagaimana yang dinyatakan dalam A 3 k 2(2) KMT. Dengan membaca bersama A 59 k 34(2) dan A 3 k 2(3) KMT bermaksud di mana, seperti dalam kes ini, satu permohonan untuk kajian semula perlu dibuat, ia boleh dibuat pada bila-bila masa dalam tempoh 14 hari, dan 14 hari tersebut patut bermula pada hari selepas perintah dibuat, dan memandangkan perintah tersebut, iaitu penafsiran bil kos telah dibuat pada 30 Januari 2001, 14 hari tersebut patut bermula daripada 31 Januari 2001 dan oleh itu hari ke-14 adalah 13 Februari 2001. Maka, perayu telah memfailkan kandungan 20 dalam masa yang ditetapkan. Adalah jelas, responden terkeliru dengan kesan A 3 k 2(3) KMT. Responden telah gagal untuk membaca A 3 k 2(3) KMT dengan kesan A 59 k 34(2) KMT. Jika ia telah berbuat demikian, ia tentu telah mengambil perhatian bahawa A 59 k 34(2) KMT hanya boleh dibaca dengan A 3 k 2(2) dan bukan A 3 k 2(3) KMT. Tempoh yang dispesifikasikan dalam A 3 k 2(3) tidak membenarkan 14 hari tersebut bermula selepas tarikh perintah dibuat. Perkataan-perkataan yang digunakan adalah tindakan, iaitu seperti dalam kes ini, pemfailan permohonan untuk kajian semula, mesti dibuat dalam tempoh dan tidak kurang daripada 14 hari yang diperuntukkan. Namun begitu kaedah yang khususnya berhubung dengan kajian semula menyatakan bahawa tempoh 14 hari tersebut sepatutnya bermula bila-bila masa dalam tempoh 14 hari selepas keputusan dibuat. Adalah jelas, A 59 k 34(2) KMT bermaksud untuk dibaca dengan A 3 k 2(2) KMT dan bukan A 3 k 2(3) KMT (lihat ms 304A–D).]

Notes

For cases on review of registrar's certificate, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1733–1735.

Legislation referred to

Rules of the High Court 1980 O 3 r 2(1), (2), (3), O 59 r 34(1), (2)

Jannu bte Babjan (*Lim Cheng Poh, Lim & Rahim*) for the petitioner.
Jagjit Singh (*JJ Singh & Associates*) for the respondent.

Kamalanathan Ratnam J: The senior assistant registrar ('SAR') assessed costs in a winding up petition and fixed the sum at RM33,333.33. Dissatisfied with the sum awarded, the petitioner sought a review before the SAR. The respondent then raised a preliminary objection at the review stage contending that the application for review (encl 20) was filed out of time. The learned SAR upheld the preliminary objection and dismissed encl 20 with costs. Hence, this appeal before me.

Findings of the court

Enclosure 20 was filed on 13 February 2001. Order 59 r 34 of the Rules of the High Court 1980 ('the RHC') deals with reviewing the bill of costs. The relevant rules for this case are r 34(1) and (2) which read as follows:

> (1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by the Registrar in respect of any item, may apply to the Registrar to review his decision in respect of that item.
>
> (2) An application under this rule for review of the Registrar's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the Registrar.

It is agreed by both parties that the plaintiff filed encl 20 on the 14th day, the SAR having taxed the bill on 30 January 2001. Counsel for the appellant contends that since the review was filed on the 14th day, that clearly fell within the provision of 'within 14 days' as stated in sub-r (1). Counsel for the respondent, however, argued that the 14 day period expired on 12 February 2001. What both their submissions amounted to was that the appellant relied on O 3 r 2(2) of the RHC, whereas the respondent relied on O 3 r 2(3) of the RHC.

For ease of reference, it is necessary to reproduce O 3 rr 1, 2 and 3 which read as follows:

> 1 Without prejudice to the Interpretation Act 1967, in its application to these rules, the word 'month', where it occurs in any judgment order, direction or other document forming part of any proceedings in the High Court, means a calendar month unless the context otherwise requires.
>
> 2 (1) Any period of time fixed by these rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.
>
> (2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
>
> (3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.
>
> (4) ...
>
> (5) ...

3 Unless the court otherwise directs, the period of the Court Vacation shall be excluded in reckoning any period prescribed by these rules or by any order or direction for serving, filing or amending any pleading.

To my mind, the clear distinction rests with the word 'after' as stated in O 3 r 2(2). Reading O 59 r 34(2) with O 3 r 2(2) means that where, as in this case, an application for a review is to be made, it can be done at any time within the 14 days, and which 14 days is to start running the day after the order is made, and since the order, namely the taxation of the bill of costs was done on 30 January 2001, the 14 days would start running from 31 January 2001 and therefore the 14th day would be 13 February 2001. The appellant is therefore within time to have filed encl 20. Clearly, the respondent has confused itself with the effect of O 3 r 2(3). The respondent had failed to read O 3 r 2(3) with the effect of O 59 r 34(2). If it had done so, it would have noted that O 59 r 34(2) can only be read with O 3 r 2(2) and not O 3 r 2(3) of the RHC. The period specified in O 3 r 2(3) does not allow for the 14 days to commence after the date of the order being made. The words used are that the act, ie as in this case, the filing of the application for review, must be done within or not less than the 14 days provided. But the rule specifically relating to review says that the 14 day period should commence at any time within 14 days after the decision is made. Clearly, O 59 r 34(2) is meant to attract to itself, O 3 r 2(2) to be read together and not O 3 r 2(3) of the RHC. The appeal is allowed with costs and the order of the learned SAR dismissing the review on the preliminary objection that the review was filed out of time is set aside.

Appeal allowed.

Reported by Wong Ee Lynn